

RSPA 2003-14547-8

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# NATIONAL PRIVATE TRUCKING ASSOCIATION

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BY MESSENGER:

July 29, 1988

Dockets Unit  
Research and Special Programs  
Administration  
Department of Transportation  
Room 8426  
400 7th Street, S.W.  
Washington, D.C. 20590

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DOT/RSPA  
DOCKETS

Re: Docket No. IRA-43; City of Maryland Heights (Missouri),  
Application for Inconsistency Ruling

Enclosed is an original and four (4) copies of the joint comments of the National Private Trucking Association and Private Truck Council of America in the above-captioned proceeding.

Please date-stamp one of the copies and return it to the undersigned in the self-addressed, stamped envelope which is enclosed for your convenience.

Very truly yours,

  
Robert A. Hirsch  
General Counsel

RAH/mls

Enclosures

**ORIGINAL**

BEFORE THE  
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION  
U.S. DEPARTMENT OF TRANSPORTATION

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DOCKET NO. IRA-43;  
  
CITY OF MARYLAND HEIGHTS (MISSOURI)  
APPLICATION FOR INCONSISTENCY RULING

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COMMENTS OF THE  
NATIONAL PRIVATE TRUCKING ASSOCIATION  
AND  
PRIVATE TRUCK COUNCIL OF AMERICA

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PRIVATE TRUCK COUNCIL OF AMERICA  
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JULY 29, 1988

BEFORE THE  
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION  
U.S. DEPARTMENT OF TRANSPORTATION

DOCKET NO. IRA-43;  
CITY OF MARYLAND HEIGHTS (MO)  
APPLICATION FOR INCONSISTENCY RULING

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In the Federal Register of June 6, 1988, the Director of the Office of Hazardous Materials Transportation ("OHMT") of the Research and Special Programs Administration ("RSPA") published a notice that an application for an inconsistency ruling has been filed by the City of Maryland Heights, Missouri ("City"). 53 Fed. Reg. 20736. RSPA's notice further requested the public to comment on whether Section I of the City's Ordinance 88-378 is consistent with Hazardous Materials Transportation Act ("HMTA") or the Hazardous Materials Regulations ("HMR"). Id. Pursuant to the notice, comments are due on or before June 29, 1988.

In response to that notice, the following are the comments of the National Private Trucking Association ("NPTA") and the Private Truck Council of America ("PTCA").

IDENTIFICATION AND COMMENTS OF NPTA AND PTCA

NPTA and PTCA are national associations representing the interests of manufacturers, processors, distributors, and retail establishments that operate their own fleets of commercial motor vehicles incidental to and furtherance of their primary, non-transportation business enterprises.

The combined membership of NPTA and PTCA consists of approximately 3000 corporations, and includes many of the Fortune 500 companies, as well as regional and small companies. In terms of company and fleet sizes, the types of equipment being operated, source of drivers, fuel efficiencies, location of operations, annual mileage traveled, and other such analytical factors, the operations of the individual members of the two associations are representative of the interstate motor private carrier industry.

Many of the members of the two associations have also obtained operating authority from the Interstate Commerce Commission and are engaging in for-hire operations as contract or common carriers. Thus, in the aggregate, the membership is representative of the interests of shippers, private carriers and for-hire carriers.

In their primary, non-transportation capacities, the associations' members are shippers who are involved in the manufacture, processing, distribution and/or sale of virtually every commodity being either produced in, or imported into, this country. The members' products include chemicals, electrical products, food and related commodities, wood products, metal fabrication, paper and allied goods, petroleum, rubber and plastic products, and textiles and apparel. Many of associations' members are, therefore involved in the transport of hazardous materials in commerce.

As shippers and carriers of hazardous materials, therefore, the members of NPTA and PTCA have a keen interest in, and will be significantly affected by, the outcome of this proceeding.

SECTION I OF THE CITY'S ORDINANCE  
SHOULD BE DECLARED INCONSISTENT

As described in the notice, Section I prohibits the transport of "hazardous", and other, wastes until the transporter first provides a bond in the amount of \$1000 per vehicle. For several reasons, the bonding requirement of Section I should be declared inconsistent.

First, RSPA has on a number of occasions held state and local indemnification and bonding requirements whose compliance would result in a rerouting by affected carriers and exportation of risk from the one jurisdiction to another to constitute de facto bans. As such, RSPA has held such State and local restrictions to pose an obstacle to the accomplishment of the objectives of the HMTA and therefore to inconsistent with, and thus preempted by, the HMTA and HMR. See, e.g., IR-10, New York State Thruway Authority Restrictions on the Transportation Of Radioactive Materials, 49 Fed. Reg. 46645 (Nov. 27, 1984). To the extent that Section I requires a bond as a precondition to the transport of hazardous wastes and substances governed by the HMTA and HMR, Section I constitutes such a de facto ban.

Notwithstanding that the insurance requirements which 49 C.F.R. §387.15 imposes on transporters of hazardous materials and wastes are not relevant here insofar as the requirements of Section I may be compared by RSPA with the federal insurance requirements of §387.15 for purposes of determining the consistency of the former with the latter, (referring to RSPA's statement in the notice), the require-

ments of §387.15 are nonetheless relevant to RSPA's recognition of the specific obligation which Section I would impose in addition to §387.15. That obligation is relevant here. By imposing upon carriers the obligation to comply with the bond requirement of Section I in addition to complying with the requirements of §387.15, Section I will compel many carriers to reroute around the City, thereby resulting in the diversion of affected shipments into other jurisdictions and increases in overall transit time. As noted above, RSPA has deemed previously deemed such a result to pose an obstacle to the accomplishment of the Congressional goals of the HMTA and therefore inconsistent. NPTA can see no valid reason why a similar finding of inconsistency is not warranted here.

In addition to posing an obstacle to the HMTA as a de facto ban, for the reasons just discussed, compliance with Section I's prohibition against transporting without a bond will result in unnecessary delays in transit for many shipments. As such, compliance with Section I poses a direct conflict with the requirement of 49 C.F.R. §177.853, which directs that highway shipments proceed with unnecessary delay. Accordingly, here is a second reason for declaring Section I to be inconsistent with the HMTA and HMR.

A third reason for ruling Section I inconsistent is multiplicity, i.e., concern that other jurisdictions could impose a similar requirement. As RSPA stated in IR-10, 49 Fed. Reg. at 46647:

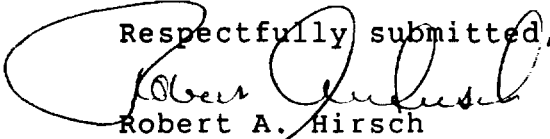
[I]f any one State may use insurance requirements to deflect interstate carriers of hazardous materials into other jurisdictions, then all States may do so. The logistical result would be, if not a total

cessation of a Congressionally recognized form of interstate transportation [sic] then the very patchwork of varying and conflicting State and local regulations which Congress sought to preclude.


See, also, IR-6, City of Covington Ordinance Governing Transportation of Hazardous Materials by Rail, Barge, and Highway the City, 48 Fed. Reg. 760 (Jan. 6, 1983), which, for the same reasons, declared prenotification requirements inconsistent.

For the foregoing reasons, NPTA urges RSPA to declare Section I of Ordinance 88-378 of the City of Maryland Height, MO, to be inconsistent with, and therefore preempted by, the HMTA and HMR.

Respectfully submitted,



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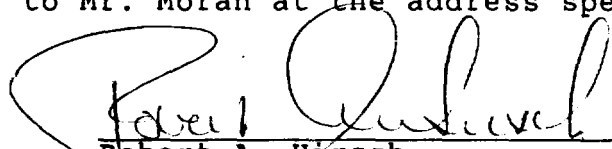


Richard D. Henderson  
Executive Vice President  
Private Truck Council of America  
2022 P Street, NW  
Washington, DC 20036

July 29, 1988

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of these comments have been sent to Mr. Moran at the address specified in the Federal Register.

  
Robert A. Hirsch